

## REMARKS

### 35 USC § 103(a)

Reconsideration and allowance are requested of Claim 6. A *prima facie* case of obviousness requires (1) some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, (2) there must be a reasonable expectation of success, and (3) the prior art references must teach or suggest all the claim limitations. In re Sang-Su Lee, 277 F.3d 1338, 61 USPQ 2d 1430 (Fed. Cir. 2002) (and cases cited therein). Applicant contends that a *prima facie* case has not been established.

Applicant submits that the claimed invention is not obvious from the cited prior art with regard to Amended Claim 6 because not all of the claimed limitations are taught or suggested by the prior art references. Specifically, neither Giguere nor McLeod teach "a grain milling process" wherein "at least a portion of the selected finished product is obtained directly from the first separation step to occur after degermination." (Applicant's Claim 6). As discussed during the telephone interview, Giguere does not teach a grain milling process wherein the finished product is obtained directly from the first separation step to occur after degermination. In Giguere, there are at least two separation steps that occur after degermination before any finished product is removed. These separation steps are shown in Giguere's Figure 5 as "Tail Class" or "Thru Class" and Tables #1, #2, and #3. (Giguere's specification defines these as separation steps in Column 4 lines 52-62.) In Giguere's Figure 5, finished product is

finally removed from the process after the third separation step, labeled the "1<sup>st</sup> BRK SIFT".

In Applicant's Amended Claim 6, finished product is removed directly after the first separation step to occur after degermination. This claim limitation can be seen in Applicant's Figures 5 and 6 wherein finished product is removed from the mill stream directly after the hominy grade sifter step.

The significance of removal of finished product after the first separation step is two fold, and demonstrates the difference from the cited prior art. First, by removing finished product, the state of the desired finished product is preserved. In other words, leaving the finished product in the process to go through further milling operations reduces the percentage of grit and increases the percentage of flour – not necessarily a desirable end result. Second, by removing finished product after the first separation, the claimed invention is able to achieve more throughput, allowing for more total production without adding expensive equipment in order to increase the capacity of the milling process. Accordingly, it is requested that Claim 6 be allowed.

**35 USC §102 (b)**

**Claim 1**

Reconsideration and allowance are requested of Claim 1 which the examiner has rejected under 35 USC § 102(b), and dependant Claims 2-5. MPEP § 706.02(b) states that a 35 USC § 102(b) rejection can be overcome by persuasively arguing that the claims are patently distinguishable from the prior art reference, and/or by amending the claims to patently distinguish over the prior art.

Invalidity for anticipation requires that all of the elements and limitations of the claim are found within a single prior art reference. Carella v. Starlight Archery and Pro Line Co., 804 F.2d 135, 138, 231 USPQ 644, 646 (Fed.Cir.1986). There must be no difference between the claimed invention and the reference disclosure, as viewed by a person of ordinary skill in the field of the invention. Scripps Clinic & Research Foundation v. Genentech, Inc., 927 F.2d 1565, 1576 (C.A. Fed. 1991).

Applicant respectfully submits that Claim 1 in its amended form is distinguishable from McLeod because Applicant's Amended Claim 1 claims "milling at least some of the grain" using a "short flow grain milling process." This is distinguishable from McLeod because in McLeod grain is never milled. In McLeod, grain is separated from the chaff and "grain leavings" (which is grain waste, not grain). The waste is milled, but the grain is not. (McLeod Col. 6, line 7-15). After the grain is separated from the chaff, grain leavings, and weed seeds, the grain is transported directly to a grain dryer or grain storage bin, and thus in McLeod the grain is never milled. (Col. 8, lines 46-48, see also Col. 9, line 40).

It is submitted that this response places Applicant's application in condition for allowance, and therefore further and favorable action on this application is requested.

Respectfully submitted,

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Reg. No.: 51,533  
September 10, 2003

**CERTIFICATE OF MAILING**

I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class Mail in an envelope addressed to: Mail Stop RCE, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22314-1450 on September 10, 2003.

  
Ryan N. Carter, Registered Representative

## ATTACHMENT A

### Amendments to the Claims

(1) (Amended) A method for providing grain milling services comprising the steps of:

transporting a short flow grain milling process to a location;

receiving grain into the short flow grain milling process;

milling at least some of the grain;

generating a finished product from said short flow grain milling process.

(2) (Amended)     ~~¶~~The method of Claim 1 wherein:

the short flow grain milling process is transported via truck.

(3) (Amended)     ~~¶~~The method of Claim 1 wherein:

the short flow grain milling process is transported via train.

(4) (Amended)     ~~¶~~The method of Claim 1 wherein:

the short flow grain milling process is transported via airborne transport.

(5) (Amended)     ~~¶~~The method of Claim 1 wherein:

the short flow grain milling process is transported via waterborne transport.

(6)     (Currently Amended) A method for milling corn comprising the steps of:

transporting a short flow grain milling process comprising a cleaner, a degerminator, at

least two separation steps ~~first sifter, and~~ at least one roller, ~~and a second sifter; and~~

processing grain to produce a selected finished product using said short flow grain

milling process wherein at least a portion of the selected finished product is obtained

• B1 | directly from the first separation step ~~sifter~~ to occur after degermination.

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